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BOISE, IDAHO 83707

Appellant, *In Propria Persona*

IN THE SUPREME COURT OF THE STATE OF IDAHO

daniel lute,)
)
Appellant,)
)
vs.)
)
State of IDAHO,)
)
Respondent.)
_____)

Case No. 20165
Docket No. 39252
APPELLANT'S BRIEF

Appeal from the District Court of the FOURTH Judicial District
for Ada County.
The Honorable Ronald J. Wilper, District Judge presiding.

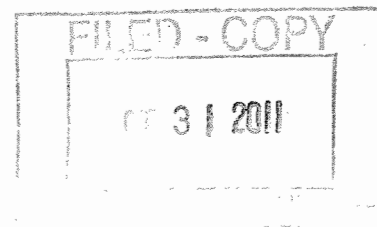


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2) Idaho Criminal Rules dictate when a Presentence investigation is to be ordered.

3) The purposes in enforcing court orders are too numerous to list - the avoidance of anarchy, chaos, lawlessness, etc.

4) The collateral consequences of the conviction are negatively affecting appellant late, despite the fact that no adverse consequences should occur for a void proceeding.

Argument

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STATEMENT OF THE CASE

A. Introduction

B. Statement of Facts and Course of Proceedings

The Idaho Supreme Court unanimously ruled that in the case of *State of Idaho v. Daniel Lute*, Docket No. 37394, Boise, April 2011 Term, Opinion No. 50, filed April 20, 2011, "the district court denial of Lute's I.C.R. 35 motion is reversed and remanded with instructions to grant the motion and vacate Lute's conviction, consistent with the Court's opinion."

On April 26, 2011, filed April 28, 2011, the district court filed an order vacating judgment of conviction, citing the above Supreme Court's ruling.

The Idaho Department of Corrections' "records employee," A. Greenwalt claims this is not an order directed to I.D.C., or he'd obey it.

The Idaho Maximum Security Institution's Warden says, "this is an issue for the courts who order P.S.I.'s and convict to prison."

The IDOC Time Computation Sheet reflects a second sentence (therefore second conviction).

The IDOC is using the conviction and its supporting information P.S.I., etc. to classify appellant Lute and to house Lute.

Additionally, this conviction was used to revoke appellant's parole for: "Committing a felony while on parole." IDOC refuses to notify the Parole Commission that this conviction has been vacated, saying, "It's still in your files!"

In July, 2011, Lute wrote a letter to Judge Wilper requesting that he enforce the order and suggested the IDOC records need to be expunged of the case to enforce the order.

Judge Wilper ordered the proctors to respond - they did not object.

Despite no objection, Judge Wilper refused to enforce the order citing no purpose would be served.

ISSUES PRESENTED ON APPEAL

- 1) Void is void; what was void from the beginning can never become valid by subsequent acts.
- 2) Idaho Criminal Rules dictate when a Presentence Investigation is to be ordered.
- 3) The purposes in enforcing court orders are too numerous to list - the avoidance of anarchy, chaos, lawlessness, etc.
- 4) The collateral consequences of the conviction are negatively affecting appellant, despite the fact that no consequences should occur against Iute for a void proceeding.

Argument

Void is void; what was void from the beginning can never become valid by subsequent acts.

Thus all proceedings in the district court for the criminal case were void upon their inception. See Black's Law Dictionary:

"Void judgment. A judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally. From its inception, a void judgment continues to be absolutely null. It is incapable of being confirmed, ratified, or enforced, in any manner or to any degree. One source of a void judgment is the lack of subject matter jurisdiction...." (emphasis mine).

By continuing to maintain records of the conviction, sentence and presentence investigation, etc. the Idaho Department of Corrections is giving the conviction validity; and in several manners:

- A) IDOC policy 319 states that the prisoner's entire record

ARGUMENT

A. Introduction Shall be used to determine if segregation of the prisoner is deemed appropriate.

B. The Classification of the prisoner is affected in that IDOC Argument give three (3) points for prior high risk crimes, which IDOC gave to late, then sent late to ICC "Close Custody," fourteen points (thirteen points equals Close custody).

C. Warden Blacker of IDMSI informed late that the PSI from the 1993 conviction describes sex crimes, justifying a Prison Rape Elimination Act (PREA) Alert to be placed upon appellant. The PSI of this conviction was cited after the conviction was ordered to be corrected as: not a sex crime.

D. The Parole Commission used this conviction to revoke late's parole for the reason of: "Committing a felony while on parole." The Commission specifically told late that, "if the conviction is overturned we will give you a new Revocation Hearing." However, IDOC counselors refuse to notify the Parole Commission of the Court's order vacating the conviction.

Judge Wilzer states that he sees no reason to enforce the order. Appellant submits that this is so without logical reasoning... that it can only derive from a resentment at having his decision reversed by the Idaho Supreme Court.

Each of the above situations are taking official recognition of a conviction which was ordered vacated, giving the void proceedings validity, confirming, ratifying and enforcing the conviction in many manners and degrees, despite it being ordered vacated. These actions by IDOC offends the rule of law: *Charta de non ente non valet*. Or as initially stated: *Quae ab initio non valent, ex post facto convalescere non possunt*.

Presentence Report

Idaho Criminal Rules, Rule 32(a) dictates when and only when a presentence investigation is to be ordered. And a P.S.I. can only be ordered after a valid conviction has occurred. Therefore, if a conviction has been vacated it stands to reason that the PSI ordered from the vacated conviction must also be vacated.

Where a judgment has been vacated, it is a nullity and the effect is as if it had never been rendered at all. State v. McFarland, 130 Idaho 358 (Ct. App. 1997). See also Grandison v. Warden, Maryland House of Correction, 423 F. Supp. 112, 115-16 (D.C. Md 1976) (Making the obvious point that merely amending records to show that a conviction has been held invalid does not afford the petitioner adequate relief from the effects of the records themselves and that only total destruction will eliminate the evil sought to be corrected).

Enforcing Court Orders

The purpose(s) in enforcing court orders are obvious and too numerous to list - the avoidance of anarchy, chaos, lawlessness, etc. are a few. The shelter from adverse and other collateral consequences are surely recognized by the courts in Butler v. State, 129 Idaho 899, 901 (1997) ("... a felony conviction has collateral consequences..."); Sibron v. New York, 392 U.S. 40, 57 (1968) ("... collateral legal consequences..."). Appellant is completely mystified by Judge Wilpert's statement that he "believes that no additional purpose would be served..." Plus he attempts to minimize the request as one to "partially redact the record." Appellant requested the Idaho Supreme Court, [Docket No. 37394], to expunge
APPELLANT BRIEF - 6

Lute's record of the conviction, entirely,

Collateral Consequences

On pages 5 and 6 herein, (A-D) I have shown some of the collateral consequences which I have faced, am facing and will face, despite the apparent legal fiction that I would be facing no adverse collateral consequences for void proceedings. In the legal fiction that "no additional purpose would be served..."

Originally Lute requested the Idaho Supreme Court in Docket No 37394 to expunge Lute's record of the conviction... however, "expungement" contemplates only a notation that a conviction has been "eliminated." (No different a result than the already ordered "vacation of the conviction"). Therefore, Lute now uses the more accurate term for the result he has sought all along... "expunction". Expunction refers to the actual "destruction" of criminal records. United States v. Bush, 438 F.Supp. 839, 840 n.1 (E.D. PA. 1977); Grandison at 423 F.Supp. 115-16.

Conclusion

The foregoing evidences that unless a complete expunction of the vacated conviction, including the PSI, police reports, letters, etc. is ordered appellant Lute will continue to suffer official adverse consequences as IDOC policy shows (319) that the prisoner's entire record will be used every time he is reviewed for segregation placement, every time he is Reclassified (3pts. for prior conviction) and since the vacated conviction is still in Lute's records IDOC won't notify the Parole Commission that he is due a new Revocation Hearing. Also the conviction and its PSI is used to place a PREA alert on appellant. The conviction, sentence, PSI, etc. must be expuncted to enforce the order to vacate the conviction. DATED OCTOBER 24, 2011.
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Li'l K
Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 26th day of October, 2011
I mailed a true and correct copy of the Appellant's Brief via
the prison mail system by placing these documents in the custody of
the staff for Idaho Correctional Center with instructions to copy and mail
original to the Idaho Supreme Court and a copy to myself and a copy to:

Mail/Box Rule
Dated

Deputy Attorney General
Criminal Division
P.O. Box 83720
BOISE, IDAHO 83720-0010

Clerk of the Courts
P.O. Box 83720
BOISE, IDAHO 83720-0101

Li'l K
Appellant

APPELLANT'S BRIEF - Final